

The Hon. David G. Estudillo

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, v. WAYLAN GRAVES,	Plaintiff, Defendant.	NO. CR23-5287 DGE STIPULATED MOTION FOR ENTRY OF PROTECTIVE ORDER NOTE ON MOTION CALENDAR: November 2, 2023
---	------------------------------	---

The United States of America, by and through Tessa M. Gorman, Acting United States Attorney for the Western District of Washington, and Casey Conzatti, Assistant United States Attorneys for said District, and the undersigned Defendant, Waylan Graves (defense counsel Phil Brennan), hereby stipulate and agree as follows:

1. Defendant is currently charged in this matter with narcotics and firearms crimes.

2. The government anticipates that pursuant to its obligations under Federal Rule of Criminal Procedure 16, Local CrR 16, the Jencks Act, 18 U.S.C. § 3500, *Brady*, and *Giglio*, it will be required to produce discovery consisting of sensitive materials that

1 | disclose personal identifying information (“PII”)¹ obtained during the investigation,
 2 | including but not limited to personal information about witnesses, victims, and third
 3 | parties, and other sensitive information obtained during the investigation (collectively,
 4 | the “Protected Material”).

5 | 3. This Stipulation is submitted for the purpose of ensuring that the Protected
 6 | Material contained in the discovery in this case is not disseminated to anyone other than
 7 | counsel and the members of counsels’ litigation team, and under certain circumstances,
 8 | Defendants.

9 | 4. Under the terms of the proposed Order, Defendant’s counsel will be
 10 | provided with discovery, including the “Protected Material.”

11 | 5. Any Grand Jury transcripts provided during discovery will be considered
 12 | Protected Material without further designation by the government.

13 | 6. Other information believed by the government to be Protected Material will
 14 | be so designated by the government. Said material may include, but is not limited to,
 15 | information related to the victim, witnesses, and third parties, criminal history reports,
 16 | and related *Giglio* impeachment materials.

17 | 7. Possession of the Protected Material is limited to defense counsel, as well
 18 | as defense counsels’ investigators, paralegals, assistants, law clerks, and experts
 19 | (hereinafter collectively referred to as “members of the defense team”).

20 | 8. Members of the defense team may not provide copies of the Protected
 21 | Material to other persons, including to the Defendant. In addition, defense counsel is
 22 | required to provide a copy of this Protective Order to members of the defense team, and
 23 | obtain their agreement to be bound by the terms and conditions of this Protective Order.
 24 |

25 | ¹ “PII” includes, but is not necessarily limited to, the information identified in Fed. R. Crim. P. 49.1(a) and includes
 26 | full names, dates of birth, Social Security numbers (or other identification information), financial account
 27 | information (including account numbers), tax information, driver’s license numbers, addresses, telephone numbers,
 28 | locations of residences or employment, medical records, school records, juvenile criminal records, and other
 | confidential information. The government has endeavored to redact PII as appropriate, but the parties acknowledge
 | and agree that this will not always be possible, and that in some instances un-redacted PII may be necessary to the
 | defense.

1 9. When a Defendant is held at the Federal Detention Center (FDC), they will
 2 be permitted to review the Protected Material, consistent with the regulations established
 3 by the BOP for review of Protected Material, with or without his counsel in a controlled
 4 environment at the Federal Detention Center (FDC), but will be prohibited from printing
 5 out, copying, or disseminating the material. If a Defendant is on pretrial release, they
 6 will be permitted to review the Protected Material at the offices of his counsel, or via a
 7 video conference call, but will be prohibited from printing out, copying, or disseminating
 8 the discovery.

9 10. Nothing in this Stipulation shall prevent any party from seeking
 10 modification of this Protective Order or from objecting to discovery that it believes to be
 11 otherwise improper. In the event that defense counsel believes that the government has
 12 incorrectly designated material as Protected Material, said counsel will first confer with
 13 the government to attempt to resolve the issue. If the parties are unable to resolve the
 14 dispute, counsel is free to raise the issue with the Court by way of a motion.

15 11. Upon agreement of counsel for the government, members of a defense team
 16 may provide copies of specific Protected Material, or redacted versions of such material,
 17 to a Defendant. When seeking the government's agreement to give such a copy to a
 18 Defendant, members of the defense team will identify with reasonable particularity,
 19 including (where available) the specific bates numbered pages and or recording
 20 descriptions, the specific material defense counsel proposes to give to a Defendant.
 21 Unless expressly stated otherwise by the government, copies of Protected Material to be
 22 provided to a Defendant will continue to be Protected Material subject to all of the
 23 protections of the Court's Order, with the sole exception that a copy can be given only to
 24 a Defendant (and not shared with anyone else outside the defense team). If counsel for
 25 the government and counsel for a Defendant cannot reach agreement on whether
 26 particular portions of the Protected Material or redacted versions of Protected
 27 Material should be given to a Defendant under these conditions, defense counsel may
 28 raise the issue with the Court by way of a motion.

12. Nothing in this Stipulation shall be deemed to require the government to provide particular discovery at a time or in a fashion inconsistent with applicable law. The failure to designate any materials as Protected Materials shall not constitute a waiver of a party's assertion that the materials are covered by this Protective Order.

13. The parties respectfully request that the Court issue the proposed Protective Order.

Respectfully submitted this 2nd day of November, 2023.

TESSA M. GORMAN
Acting United States Attorney

s/ Casey Conzatti
CASEY CONZATTI
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101
Phone: 206-553-4254
E-mail: casey.conzatti@usdoj.gov

SO STIPULATED this 2nd day of November, 2023 (via email authorization).

s/ Phil Brennan
PHIL BRENNAN
Attorney for Waylan Graves